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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/535,421	12/12/2005	Martin Gustavsson	10400-000163/US	6003
30593 7590 11/16/2009 HARNES, DICKEY & PIERCE, P.L.C. P.O. BOX 8910 RESTON, VA 20195				
EXAMINER				
ANDERSON, JERRY W				
ART UNIT		PAPER NUMBER		
1794				
MAIL DATE		DELIVERY MODE		
11/16/2009		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

### Office Action Summary

**Application No.**

10/535,421

**Applicant(s)**

GUSTAVSSON, MARTIN

**Examiner**

JERRY W. ANDERSON

**Art Unit**

1794

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☐ Responsive to communication(s) filed on 16 June 2009.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-20 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-20 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
  2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/SF/ICE)
- Paper No(s)/Mail Date \_\_\_\_\_
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date \_\_\_\_\_
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_

### **DETAILED ACTION**

1. Examiner acknowledges the receipt of the Applicant's Amendment, mailed 6/16/2009. Claims 1 and 5 amended, claims 1-20 pending.

### **Claim Rejections - 35 USC § 112**

2. The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

3. Claims 1 and 5 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claims contain subject matter which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor, at the time the application was filed, had possession of the claimed invention. The claims are amended to state "the flexible bottom being chamfered along the periphery adjacent the lateral walls" The dictionary defines chamfer as a bevel edge connecting two surfaces, if the surfaces are at right angle, the chamfer will typically be symmetrical at 45 degrees. Chamfering refers to removing the exterior corners, fillet is the rounding of interior corners. It is not clear as the angle of the chamfer between the bottom and vertical side. It is not clear if the applicant is referring to an interior angle or an exterior angle. The specification offers no support as to the angle of the surface between the vertical side and the bottom. The

un-amended claims offer no support, of chamfering stating "wherein the tray part located at the periphery of the bottom extends at an angle to the direction of the extension of the tray" (claims 12, 19, 20) and "flexible bottom and stiff lateral walls extending in the vertical direction of the tray". (claims 1, 5) The drawings, (fig. 1, 2) not designated as being to scale, show a surface going from the bottom to the side wall, as an angle much less than 45°. Appropriate correction is requested.

4. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

5. Claims 1 and 5 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

6. Claims 1 and 5 rejected under 35 U.S.C. 112, second paragraph, as being incomplete for omitting essential structural cooperative relationships of elements, such omission amounting to a gap between the necessary structural connections. See MPEP § 2172.01. The omitted structural cooperative relationships are: The claims are amended to state "the flexible bottom being chamfered along the periphery adjacent the lateral walls" The dictionary defines chamfer as a bevel edge connecting two surfaces, if the surfaces are at right angle, the chamfer will typically be symmetrical at 45 degrees. Chamfering refers to removing the exterior corners, fillet is the rounding of interior corners. It is not clear as the angle of the chamfer between the bottom and vertical side. The specification offers no support as to the angle of the surface between

the vertical side and the bottom. The un-amended claims offer no support of chamfering stating "wherein the tray part located at the periphery of the bottom extends at an angle to the direction of the extension of the tray" (claims 12, 19, 20) and "flexible bottom and stiff lateral walls extending the vertical direction of the tray".(claims 1, 5) The drawings, (fig. 1, 2) not designated as being to scale, show a surface going from the bottom to the side wall, as an angle much less than 45°. . It is not clear if the applicant is referring to the interior corner or the exterior corner.

7. Appropriate correction is requested.
8. Applicant in responding to this office action is alerted as to the introduction of new matter.

***Claim Rejections - 35 USC § 103***

9. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
10. Claims 1-9, 12-16, and 19-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over Haamer, J., U.S. Pat. # 6,437,305, in view of Snyder jr., O.P., Safety of Pasteurized-Chilled Food downloaded from the internet through the internet archive, www. Archive.org, at <http://www.hi-tm.com/Documents/Chillfd.html>, for the reasons stated in the office action mailed 3/16/2009.
11. Claims 10, 17, 11, and 18, are rejected under 35 U.S.C. 103(a) as being unpatentable over Haamer, J., U.S. Pat. # 6,437,305, in view of Matos, J.R., U.S. Pat. # 5,780,824, for the reasons stated in the office action mailed 3/16/2009.

***Response to Amendment***

12. The applicant having amended claims 1 and 5, new 35 USC § 112 rejections thereunto is necessitated

***Response to Arguments***

13. Applicant's arguments filed 6/19/2009 have been fully considered but they are not persuasive.

14. First, the applicant states the prior art does not disclose filing of the container to about 40-60 %. To respond, the prior art, Haamer discloses that the purpose of the invention was to enable the use of young, thin-shelled mussels, (lines 28-29, col. 2, '305) that the thin shells break easily during processing. (lines 46-47, col.1, lines 15-22, col.2, '305) additionally, the maximum quantity of mussels that can be rapidly processed is approximately 400 g. (lines 30-32, col. 3, '305) Thus it would have been obvious to one of ordinary skill in the art, knowing that a young mussels weigh less than adult mussels, approximately 1-3 oz, or 25-75 g, that the number of mussels in the processing package would be less than ten. Further, it would have been obvious to one of ordinary skill in the art that the fragile thin-shelled young mussels would be processed with minimal overlap to avoid breaking of the shells during processing. Thus the depiction of the mussels in the tray with the flexible overlap, (figs 5a-5e, '305) showing the mussels is a single layer is a realistic depiction of the arrangement of the product in the tray. Likewise, it would have been obvious to one of ordinary skill in the art that the sidewalls need not extend above the product more than the extent

necessary to provide protection of the product from accidental breakage. Thus it would have been obvious to one of ordinary level of skill in the art that a single layer of mussels whose thicknesses are somewhat less than the level of walls, packed as closely as possible without overlap, that the level of filling would overlap the range of the claimed invention, 40-60%.

15. Second, the applicant states that the prior art does not disclose a tray with a flexible bottom, stating that the flexible in Haamer refers to the trays top covering. However, Haamer specifies a container covered with a material (lines 8, col. 3, '305) and that said material molds itself to the contents, (lines 20-22, col. 3, '305), and the container must be flexible enough to mold itself to its contents to some degree, (lines 40-41, col. 3, '305) Further the container is a plastic tray. (lines 32, col. 4, claim 8, '305) It would have been obvious to one of ordinary skill in the art given this description, this prior art, a plastic tray, flexible to conform to the contents to some extent, and a covering that molds itself to the contents, discloses the claimed invention.

16. Third, the applicant has amended claims 1 and 5 to claim a chamfered bottom, deriving this from claims 12, 19 and 20 which state "wherein the tray part located at the periphery of the bottom extends at an angle to the direction of extension of the tray" Examiner has rejected the use of "chamfered" as new matter not supported by the disclosure. However, as a practical matter, it would have been obvious to one of ordinary skill in the art that the plastic tray herein was mass produced, in all probability by injection molding, and thus, the necessities of said type of production would

necessitate rounding of the exterior corners and interior corners of the tray, thus creating a fillet of the interior corner, and a chamfering of the exterior corner.

### ***Conclusion***

17. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, THIS ACTION IS MADE FINAL. See MPEP

§ 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

18. A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JERRY W. ANDERSON whose telephone number is (571)270-3734. The examiner can normally be reached on 7 am to 5 pm.



If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Keith Hendricks can be reached on (571) 272-1401. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/C. SAYALA/  
Primary Examiner, Art Unit 1794

jwa